

# **Municipal Double Taxation Montgomery County Vs. The City Of Takoma Park**

*By Rick Finn*

## **Introduction**

Double taxation has been an ongoing issue in the State of Maryland for over 30 years. It has been a divisive issue which has caused considerable consternation between incorporated municipalities and counties. It has also led to fierce political battles in the Maryland General Assembly. Under State law, double taxation exists when two conditions are present: First, a county and a municipality within that County provide similar services financed from property tax revenues and; secondly, when the County does not provide those services within the municipal corporate limits because the city is already providing those services. In effect, there is double taxation because both jurisdictions are charging the property owner a tax for the same services while the property owner is receiving services only from the city.

State law provides cities with the ability to preempt themselves from county services through the enactment of an Ordinance. When such legislative action is taken by a city government, the County is not allowed to provide the designated service within the corporate limits of the city. In effect, the City government officials determine what services they will provide to their residents and at what service level it will be provided. Generally, services that cities provide which are also provided by counties include police protection, highway and street maintenance, sanitation and waste collection, housing, economic development, planning and zoning, and parks and recreation.

## **Legislative History**

During 1975 the Maryland General Assembly enacted double taxation legislation that for the

first time had a statewide application. After failing to enact a measure during the 1974 legislative session, the General Assembly approved a bill that permitted but did not require counties to offer a property tax setoff for cities that provided services in lieu of similar county services. A property tax setoff in effect compensates municipal property taxpayers for double taxation by levying a lower county property tax rate within the city, known as a property tax differential, or by granting a direct payment to the municipality, known as a property tax rebate. However, due to last minute political maneuvering, the legislation exempted one-third of the counties from the new double taxation requirements. However, as a result of legislation passed over the next three years (1976-78), all of the Maryland counties were covered under the double taxation legislation with the exception of Howard County which does not have any municipalities. Although the 1974 legislation began to deal with the inequity issue created by double taxation the legislation was permissive and not mandatory. As a result, the county governments generally decided not to provide their respective cities with any type of rebate and the double taxation issue continued to be a major problem and source of frustration for cities throughout the state.

Through a well organized effort led by the Maryland League of Municipalities new legislation was enacted during the 1982 Legislative session which required all county governments to meet and confer annually with municipal governments within their jurisdictions to determine whether double taxation existed. However, from the vantage point of the cities, the legislation fell far short from the goal of requiring counties to correct the inequities that existed due to double taxation. It was not until the following year (1983) that the General Assembly enacted a law which required a county to provide a property tax setoff for municipal property taxpayers if a municipality provided a service in lieu of a similar service provided by the county. Unfortunately, the 1983 law

provided that the county would make the final decision on whether or not a property tax setoff should be provided to the city and how much the setoff should be. The municipality could discuss the matter with the county but the county made the final decision and the municipality had no right to appeal. Again due to last minute political maneuvering the final legislation that passed during 1983 provided that seven counties (only five with municipalities) were not required to address the double taxation issue if the county deemed it inappropriate to do so.

During 1983 to 1998 the double taxation law, as it affected municipalities, remained unchanged although over this period of time several amendments to the law were introduced but failed to be enacted. However, the double taxation issue remained a major concern for municipalities who saw their property taxpayers continuing to be required to pay for city services while at the same time being taxed by the county for the same services which they were not receiving. Cities across the state united during the 1997 Legislative session and, under the leadership of the League of Municipalities, legislation was introduced which would have accomplished the following:

- moved all counties in the State to the shall category requiring each respective county to provide a property tax setoff where double taxation existed;
- established guidelines and deadlines for annual municipal-county property tax setoff discussions; and
- established mandatory mediation mechanisms to address instances where a municipal government and a county government could not agree on a tax setoff issue.

However, due to fierce opposition from the Maryland Association of Counties, the legislation sponsored by the League was significantly amended so that when it finally passed the Senate, the bill



only provide for a special County/City Task force which was established to study the double taxation issue and to make recommendations to the General Assembly the following year.

Based on strong encouragement from the General Assembly, the Maryland Municipal League and the Maryland Associations of Counties worked together on the newly created Task Force and agreed to compromise legislation which was subsequently introduced and passed during the 1998 session of the General Assembly. The approved law, which remains in effect through the present day, sets out procedures by which a municipality may request and negotiate double taxation relief from the county and be guaranteed at least a minimum level of response from the county. The law also provides latitude for the county and the municipality to establish different terms for negotiation, calculations and property tax offset approval processes when both parties agree to the alternative approach.

Under the Double Taxation law that was approved during 1998, a municipality that wishes to receive a property tax setoff may submit a proposal stating the desired level of the tax offset for the upcoming fiscal year at least 180 days before the required approval date of the annual county budget. Upon the receipt of the municipal proposal the county must promptly submit to the municipality financial records and other documents that detail county revenues and expenditures.

At least 90 days prior to the approval of the annual county budget both the municipality and the county must designate individuals to meet and discuss issues related to double taxation. Once the municipal representatives have met with the county representatives, the County is empowered under the law to make the final determination on what if any property tax setoff the municipality will receive. After the process is complete the county must notify the municipality in writing whether it will provide a property tax setoff and if a setoff is to be provided what the amount will be. The



county must also provide a description of the information or process used to determine the level of the property tax setoff.

## **Application of the Double Taxation Law in Montgomery County**

Takoma Park is one of three cities located in Montgomery County. Takoma Park is the smallest of the three cities with a population of 17,300. The City of Rockville has a population of 47,388 while the population in the City of Gaithersburg is 50,454. Also located in Montgomery County are thirteen incorporated Villages which range in population from several hundred up to three thousand. The total population of the villages is 23,250. Based on the 2000 census, the population for Montgomery County (including the three cities) is 873,341. Therefore, 138,392 people or 16 % of the County population reside in municipalities.

Following the adoption of the 1982 double taxation law by the State, a Special Task Force was established by the County Executive in Montgomery County. The Task Force was comprised of political representatives from the cities and villages as well as representatives from the County Council and County Executive's office. All of the members of the Task Force were elected officials from the various government entities (three from the County Council, the County Executive and three from the cities and villages, see Exhibit A) and these elected officials were provided staff support from the County.

The Task Force's report and recommendations were submitted to the County Council during April of 1983 and they were enacted. The report included a strong recommendation that the County deal with the double taxation issue through a tax rebate program. The recommendations dealt primarily with road and maintenance and code enforcement reimbursements and although it represented an important beginning unfortunately many of the important municipal services such as

Police, Recreation, Park Maintenance and Library services were not addressed. Double taxation in Montgomery County remained a controversial issue with cities and village officials although most municipal officials saw the implementation of the Task Forces recommendations during 1983 as an important first step.

By the middle of the 1990's, the city officials in Rockville, Gaithersburg and Takoma Park were frustrated with the relative small property tax rebates that were being provided by the County. As a result they were successful in applying enough political pressure on the County to create a new County/City Task Force to reexamine the double taxation issue. During April of 1995 a new Double Taxation Task Force was established by the County Council. However, unlike the original Task Force established back in 1982 which was made up of elected officials the 1995 Task Force was made up of professional Staff representing the interest of the municipalities and the County. Three City Managers from the respective three cities represented the interest of the municipalities while members of the County's Office of Budget and Management and the County Administrator were appointed to represent the County.

After a year of intensive discussions, the Task Force submitted its final report to the County Council on June 5<sup>th</sup>, 1996. The report was much more technically oriented than the 1983 report and it effectively established formulas which were to be used annually to determine the amount of property tax rebate a city was eligible to receive based on the services it provided. The report was approved by the County Council and the County Code was amended to provide the following prerequisites for reimbursing cities providing services eligible under the definition of double taxation:

Municipal public services shall qualify for county reimbursement if the following conditions

are met: 1) The municipality provides the service to its residents and taxpayers; 2) The service would be provided by the county if it were not provided by the municipality; 3) The service is not actually provided by the county within the municipality; and 4) The comparable county service is funded from revenues derived partially from the taxpayers in the participating municipality. Subject to provisions of section 30A-4, each participating municipality shall be reimbursed by an amount determined by the County Executive to approximate the amount of municipal tax revenue to fund the eligible services. The amount of the reimbursement shall be limited to the amount the County Executive estimates the County would expend if it were providing the service.<sup>1</sup> [ Note: Section 30-A-4 provides that the reimbursement expenditure by the County are subject to the "limits of the funds appropriated by the County Council" ].

Subsequent to the approval of the County's 1996 fiscal budget, the County has calculated the rebate formulas for each effected respected municipality and has included the rebate amount in the County Executive's recommended budget. Takoma Park and the other municipalities located in Montgomery County do not meet and discuss the annual rebate since all of the calculations are performed by County Staff and submitted to the County Council for approval as part of the annual budget process. Each municipality is advised by the County prior to the adoption of the County budget what the property tax rebate amount will be for each eligible service.

A review of the 2002 Report on County-Municipal Tax Differentials which is prepared annually by the Department of Legislative Services provides the following information on the changes in local tax setoff during the past five year period:<sup>2</sup>

<u>County</u>	<u>FY 1997</u>	<u>FY 2002</u>	<u>Difference</u>	<u>% Change</u>
Montgomery	\$4,391,344	\$4,433,059	\$41,715	0.9%
Total All Counties	\$35,926,684	\$40,724,282	\$4,797,598	13.4%

<sup>1</sup> Montgomery County Code, Chapter 30, Section A-3

<sup>2</sup> 2002 Report on County-Municipal Tax Differentials, prepared by Department of Legislative Services, Annapolis, Maryland, November 2002 - Exhibit 4



Montgomery County's annual General Fund budget during the same five year period increased from \$375,490,570 during fiscal year 1997 to \$597,519,830 which represents a total percentage increase of 62.8%. In addition, the County's property tax levy increase from \$779,500,000 in 1997 to \$877,900,000 in 2002 representing a total percentage increase of 12.6 % for five years or an annual increase of 2.3%.

In Takoma Park, the city's property tax rebate from the County during the same five year period was as follows:

	<u>FY 97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>	<u>FY02</u>
Tax Rebate	\$1,549,260	\$1,598,930	\$1,458,476	\$1,483,713	\$1,348,720	\$1,402,004

A careful analysis of these numbers clearly indicates that formulas being used by the county are not providing a fair and equitable property tax rebate to Takoma Park. In fact, while the annual County budget and the County property tax levy continue to increase, the City's tax rebate has steadily decreased since the 1998 fiscal year. When comparing the County tax rebate provided to the Takoma Park during fiscal year 1997 with the rebate provided during fiscal year 2002, it represents a loss of 10.5%. Yet the services provided by Takoma Park that was eligible under the double taxation law remained unchanged in both the City and the County.

Upon further review there appears to be two primary reasons why the rebate formulas are not providing Takoma Park with the amount that it should be getting due to double taxation. First, although the County is using the rebate formulas that were prepared and agreed to from the 1996 Task Force and approved by the County Council, the County has unilaterally redefined the units of service that are used to calculate the rebate formulas. More specifically, the units of measurement

that the County uses to calculate how much it spends for a specific service has changed and this has adversely effected the amount of rebate that the municipalities are eligible to receive.

Secondly, since the property tax only accounts for approximately 32% of the county's revenues, the county is able to move its revenues around in a manner which reduces its liability under the double taxation requirements. For a service like road maintenance which would require the county to provide a property tax rebate, the County can elect to fund this service with funds from income tax and not property tax. Rather it can take the property tax funds that it would have placed into its Road Maintenance expenditure and move it to transit services. Since none of the municipality provides transit services the County does not fall under the double taxation requirements for the expenditure of these property tax funds, thereby effectively minimizing its exposure to provide reimbursements to the municipalities. In reviewing the County's financial records, it was determined that the shifting of revenue funds has occurred in a gradual basis thereby not raising the attention of the municipalities.

The conflict over the amount of tax rebate that the County provides to Takoma Park and the other municipalities located in the County is not caused by the formulas that were negotiated during 1996 but rather how the County applies the units of measurement that are generated to allow the calculation of the formulas. The County controls the entire process including collecting the service data for itself and the municipalities and then calculating the formulas. Since the municipalities are not included in the process, the cities have no way of checking and verifying the calculations or determining if the tax rebates were correctly calculated.